



May 1, 2019

Mr. Leroy Travers
Lead Education Associate
Charter School Office
Delaware Department of Education
401 Federal St., Suite 2
Dover, DE 19901

Re: **Odyssey Charter School**

Dear Mr. Travers:

Your office has asked that Odyssey Charter School (“OCS”) provide, by May 1, its plan to address the recommendations made by the Public Integrity Commission (“PIC”) in its April 2, 2019 letter (“Letter”). See, Letter pp. 11-12. This letter, approved by the OCS Board at its April 29, 2019 meeting, is written for that purpose.

While we will speak in more detail to each of the recommendations below, our Board agrees that:

1) the AHEPA majority is critical to maintain the mission and vision of the school and should not be changed, but that the OCS conflict policy needs to be improved, calling for recusal by AHEPA appointees and a waiver of the quorum requirements in the bylaws in the appropriate case;

2) the independent board members should be nominated by a committee that has no AHEPA representation;

3) OCS will require certain lease terms from Ithaka to guarantee repayment, or discuss with Ithaka alternative solutions for repayment if it is not a tenant of the school;

4) although the Board requests some clarification regarding this recommendation, the Board agrees that the governance process and transparency of its decisions, particularly those involving spending, should be increased; and



5) no member of the OCS Board will concurrently serve on the Ithaca Board and vice versa, but the Board would like further clarification regarding the remaining portion of the recommendation.

PIC Recommendation No. 1: *The Bylaws be changed so that AHEPA (or Daughters of Penelope) members no longer represent a majority of the Board and that they must recuse themselves from voting on any matter which involves AHEPA or the Daughters of Penelope.*

This recommendation has two parts. After careful consideration and discussion, the Board has decided that the AHEPA majority provision is critical to maintaining the mission and vision of the school and therefore should not be a required change. Addressing the second part, the Board agrees to modify its conflict of interest policy to call for the recusal of AHEPA members from voting on any matter in which AHEPA has a direct interest separate and apart from the school's.¹ Minutes of such deliberations will be

¹ The Conflict of Interest Policy adopted on November 13, 2018 contains the following provision:

All directors and officers must avoid any activity, investment, interest or association which compromises, or which might appear to compromise, the independent exercise of judgment and the performance of work in the best interests of Odyssey and its agents and affiliates.

We propose an amendment to this provision along the following lines:

In particular, in preparing to consider any proposed actions, the Board must inquire whether the proposed action, in addition to being in Odyssey's best interest, also materially benefits AHEPA. While the term "material" cannot be defined in advance, in this context it generally means that the benefit to AHEPA must be direct and distinguished from the general advancement of AHEPA's core values and beliefs. For example, financial benefit to AHEPA will likely be deemed "material." If



kept so that a record will exist on each occasion on which recusal was considered. Finally, because a good conflict policy starts with disclosure, Board members will be required, after reviewing the agenda for each coming meeting, to identify potential conflicts that might call for recusal.

In addition to the proposed change to the conflict of interest policy, to prevent quorum issues that arise from recusal of a majority of the Board, the Board will also approve an amendment to the bylaws that will waive quorum requirements for a vote on any matter in which AHEPA has a direct interest separate and apart from the school's interests. A simple majority of the remaining members is required for the motion to pass (e.g., if 4 non-AHEPA Board members are present, 3 would need to vote in favor for the motion to pass).

If, as we believe, these changes to the conflict of interest policy are effective, then we see no need to alter an organic feature that has existed since inception. Put another way, if conflicts of interest are the concern, then the remedy for the concern should come from the conflicts policy rather than a reorganization of the Board.

AHEPA's designation of 5 Board members has been an organic feature of OCS since it was started and all those who reviewed its application, both at Red Clay and then the Department, were aware of this important organizational feature. Moreover, because AHEPA's mission and the mission of OCS have so much in common, this feature should not be regarded as a conflict, in and of itself.

That said, we will adopt the above-described measures in order to be more effective in dealing with real conflicts of interest.

the Board finds that such an AHEPA interest will be achieved by the measure being considered, AHEPA-designated members shall recuse themselves.



PIC Recommendation No. 2: *The Nominating Committee should be truly impartial and include no members of AHEPA or the Daughters of Penelope.*

The Board will adopt this bylaw change in accordance with its bylaws within 60 days. The bylaws require 30 days' notice of proposed bylaw changes.

PIC Recommendation No. 3: *The approximately \$108,000 (appropriated funds and remainder of insurance proceeds) be repaid to OCS by either Ithaka or AHEPA before the DOE considers their charter renewal application.*

The Board believes that it acted in the best interest of the school when it approved allocating funds for Ithaka-related development. Our plan has always been to get reimbursement from Ithaka once it commenced operations. As such, Ithaka-related expenses were tracked by the OCS business office. Initially the business office erroneously coded these expenditures to local district funds; subsequently these expenditures were recoded to an earned income account.

The OCS Board agrees that any spending decision in which the financial interests of AHEPA or Ithaka appear should be flagged and resolved under our revised conflict of interest policy. However, at that time, we believed that OCS's decision, supported by advice from legal counsel, to assist in establishing a Pre-K on its campus using non-taxpayer sources of funds was an appropriate use of such revenues. The Board continues to believe that these expenditures were intended to derive significant benefits to the school – a rent paying tenant that would provide material recruiting and school readiness assistance. Ithaka's existence will materially benefit OCS and the Board's decision in this regard is not a breach of fiduciary duty, so long as each director acted "on an informed basis, in good faith and in the honest belief that the action taken was in the best interest of the company."²

In order to obtain reimbursement from Ithaka, OCS will require a rent premium in an amount to be negotiated with Ithaka whenever a lease is agreed upon. That premium over base rent will be used to reimburse OCS. If Ithaka does not open on campus, the Board will engage Ithaka in discussions regarding alternative resolutions for potential

² Aronson v. Lewis, 473 A. 2d 805, 812 (Del. 1984).



repayment, including a promissory note or other expedited repayment options depending on Ithaka's available revenues or other funding sources. However, given the current state of Ithaka, the Board believes that it will not be able to meet the reimbursement deadline as recommended by PIC.

PIC Recommendation No. 4: *The administrators of the school, Head of School, Business Director and Director of Development not be comprised of a majority of two people who belong to the same outside organization. The ease with which OCS's funds were converted to an unauthorized use is astonishing. Safeguards, such as assuring that not two administrators have a common private interest which may cause them to act contrary to their fiduciary duty to OCS.*

It is highly unlikely that the Board would hire individuals from the same organization, however we would appreciate clarification regarding DOE's expectation of this recommendation. The Board's interpretation of this recommendation is that the PIC had one particular "outside organization" in mind – AHEPA.

Going forward the school will implement certain strategies to address situations like the following expenditures about which PIC expressed concern:

- **Ithaka-related expenditures.** The expenditures to assist in the creation of Ithaka, while not the result of any breach of fiduciary duty, do reveal that the school's governance and decision-making process, particularly regarding the expenditure of funds, needs strengthening. In other words, if one were to ask the question "did Board members know of and approve of rendering assistance to start up an early learning center," the answer is "yes." But the only thing supported by a formal vote is the decision to engage a consultant who would assist in that effort. OCS acknowledges that there should be more documentation to demonstrate that the Board authorized these particular expenditures.

In recognition of this and other departures from sound corporate decision-making and governance, the Board will engage a professional who will help design strategies such as officer spending authority limits; bylaw changes making clear



which potential expenditures must get specific Board approval, etc. These improvements, when coupled with the more robust conflict of interest policy discussed earlier for both Board members and school administrators, will assist the Board in spotting potential conflicts and making sure any such conflicts do not threaten the validity of Board action.

The PIC attributes its concerns about assistance to Ithaka to AHEPA's control of the OCS Board. In this particular case, the provision of assistance to Ithaka was believed to be in the school's best interest by AHEPA and non-AHEPA directors alike. We concede, though, that the execution on the initiative was poor, leaving a record that invites the PIC, and perhaps others, to wonder whether something worse was at hand. OCS will correct that.

- **The AHEPA Fundraiser held for OCS.** The PIC also cited the OCS expenditures for an AHEPA event. The event was a fundraiser, the proceeds of which went primarily to OCS (a small portion of funds raised went to Ithaka). We assume that, had the school been the host or sponsor of its own fundraiser, then those same expenses would not be questioned. If that is so, we don't see why the OCS Board cannot help defray³ the expenses of fundraisers held for its benefit by a third party – again, so long as doing so is honestly believed to be in the best interest of the school. It is not uncommon for a host entity to stage a fundraiser for a favored non-profit; nor is it uncommon for the non-profit to defray some or all of the expenses associated with the event.
- **Attendance by OCS representatives at an AHEPA conference.** The PIC also noted the expense incurred by OCS in sending two individuals to an AHEPA conference in Atlantic City with materials describing OCS but bearing AHEPA and Ithaka logos. This expenditure was neither “unauthorized” nor a breach of any

³ AHEPA National paid for a majority of the expenses of this event. OCS's expenses were limited to a video produced to promote the school and invitations to the event.



director's fiduciary duty. The decision to authorize this expenditure was approved unanimously by the Board in July, 2018. Given that the event, by definition, was attended by individuals from other areas likely to favor the school's mission and, hopefully, offer financial support, the expense was deemed justified by the Board.

In sum, we do agree that our Board needs to be more careful in its deliberations; apply appropriate governance procedures; call out potential conflicts before any action is taken and ensure that conflicted members do not participate. Each of these changes will be approved by the Board and reflected in bylaw changes or other appropriate documents as soon as possible.

PIC Recommendation No. 5: *No OCS Board member should be a member of the Ithaka Board or vice versa. OCS Board and staff should not work on Ithaka projects.*

We will adopt the first part of this recommendation. Indeed, since November 9, 2018, there has been no OCS Board member also serving on the Ithaka Board.

Turning to the remainder of the recommendation, we fear that "working on Ithaka projects" is too vague a criterion with which to guide OCS Board members and staff. The Board would appreciate clarification regarding DOE's expectation of this recommendation. For example, would OCS employees who might wish to "work on Ithaka projects," do so on their own time?



We look forward to discussing these matters further with your Office and hope that your Office can support the path we describe in this letter. Once we have confirmation of that, we will draft the bylaw and other changes called for in this letter. In the meantime, please do not hesitate to ask any questions you might have.

Respectfully submitted,

Josiah Wolcott, President

Cc: The Honorable Susan Bunting, Secretary of Education
John Carwell
OCS Board members
Denise Parks, Head of School
Riccardo Stoeckicht, Campus Operations Officer